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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,600

03/15/2004

Ronald W. McGehee

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881 7590 07/27/2007  
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EXAMINER

MILLER, BENA B

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,600	MCGEHEE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bena Miller	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 4-9, 11-14 and 16-21, drawn to an optimizing planer system, classified in class 144, subclass 40.
- II. Claims 3, 10, 15 and 22-24, drawn to a method from planer optimization, classified in class 144, subclass 356.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). The product as claimed can be used in a materially different process of using that product, in this instance; the process of Group II does not require the specifics of the apparatus of Group I. For example, claim 1 of Group I does not require control information for each workpiece from the workpiece property information according to a desired cross-sectional profile along the length of the workpiece.

If applicant elects Group I, the applicant is required to elect from the following patentably distinct species below:

Species I: Figures 1-2b, 3, 6a-6g, 7-13, 14a-d, 15a-b, 16a-b, 17a-b, 18a-b, 19-21, 22a-b, 23a-b, 24a-b, 25-28, 29a-b, 30a-b, 31a-b, 32a-b, 33a-b, 34, 35 and 36a-b;

Species II: Figures 1-2b, 4, 6a-6g, 7-13, 14a-d, 15a-b, 16a-b, 17a-b, 18a-b, 19-21, 22a-b, 23a-b, 24a-b, 25-28, 29a-b, 30a-b, 31a-b, 32a-b, 33a-b, 34, 35 and 36a-b;

Species III: Figures 1-2b, 5, 6a-6g, 7-13, 14a-d, 15a-b, 16a-b, 17a-b, 18a-b, 19-21, 22a-b, 23a-b, 24a-b, 25-28, 29a-b, 30a-b, 31a-b, 32a-b, 33a-b, 34, 35 and 36a-b.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicants is further required to elect a single disclosed species from the following: If Species I is elected, Species I(a): Figures 15a-b; Species I(b): Figures 16a-b; Species I(c): Figures 17a-b, 19, 25-28; Species I(d): Figures 18a-b; Species I(e): Figures 20 and 21; Species I(f): Figures 22a-b, 25-28; Species I(g): Figures 23a-b, 25-28; Species I(h): Figures 24a-b, 25-28; Species I(i): Figures 29a-b; Species I(j): Figures 30a-b; Species I(k): Figures 31a-b; Species I(l): Figures 32a-b; Species I(m): Figures 33a-b; Species I(n): Figures 34; Species I(o): Figures 35; and Species I(p): Figures 36a-b.

If Species II is elected, Species II(a): Figures 15a-b; Species II(b): Figures 16a-b; Species II(c): Figures 17a-b, 19, 25-28; Species II(d): Figures 18a-b; Species II(e): Figures 20 and 21; Species II(f): Figures 22a-b, 25-28; Species II(g): Figures 23a-b, 25-28; Species II(h): Figures 24a-b, 25-28; Species II(i): Figures 29a-b; Species II(j): Figures 30a-b; Species II(k): Figures 31a-b; Species II(l): Figures 32a-b; Species

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II(m): Figures 33a-b; Species II(n): Figures 34; Species II(o): Figures 35; and Species II(p): Figures 36a-b.

If Species III is elected, Species III(a): Figures 15a-b; Species III(b): Figures 16a-b; Species III(c): Figures 17a-b, 19, 25-28; Species III(d): Figures 18a-b; Species III(e): Figures 20 and 21; Species III(f): Figures 22a-b, 25-28; Species III(g): Figures 23a-b, 25-28; Species III(h): Figures 24a-b, 25-28; Species III(i): Figures 29a-b; Species III(j): Figures 30a-b; Species III(k): Figures 31a-b; Species III(l): Figures 32a-b; Species III(m): Figures 33a-b; Species III(n): Figures 34; Species III(o): Figures 35; and Species III(p): Figures 36a-b.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

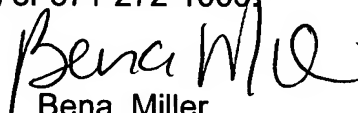
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Bena Miller  
Primary Examiner  
Art Unit 3725

bbm  
July 22, 2007